IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 828 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

RANCHHODBHAI BECHARBHAI PARMAR

Appearance:

MR DP JOSHI, APP for Petitioner No. 1
MR BG PATEL for Respondent No. 1
MR JASHWANT MAKWANA for Respondent No. 1

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 06/07/2001

ORAL JUDGEMENT

1. The State of Gujarat has preferred this appeal against the judgment and order of acquittal passed by the Learned Chief Judicial Magistrate, Bharuch in Criminal Case No. 170 of 1983 dated 17/8/1991.

2. The relevant facts in short are : According to the prosecution, complainant Manubhai Jesingbhai was discharging duties as Chief Probation Officer at Bharuch under the Probation of Offenders Act in the month of May 1980 and onwards. In his office the accused - respondent was working as Junior Clerk and one Dalsukhbhai Vaghela was working as Peon. As Junior Clerk the accused was required to withdraw money and also to disburse it. He was also required to maintain accounts and prepare vouchers, etc. In the office a cash box was maintained wherein the surplus amount of money was being kept. The custody of the said cash box was with the complainant. According to the prosecution, there were 4 keys of the cash box, which remained with the complainant.

The office of the Chief Probation Officer looked after the payment to be made to the persons whose names were recommended by the Director of Social Security. According to the procedure of payment, the complainant, if he was on duty, would sign the cheque and in his absence officer in-charge would sign it. The cash box was kept in the office in steel cupboard which remained locked and the keys remained in the custody of the complainant. Prosecution's case further is that in absence of the complainant, the keys remained with the accused, but he was not authorized to pay the monetary aid to the persons recommended by the Director. The keys were given to him only with a view to see that the widows entitled to receive the aid could receive it by money order and the money order was required to be sent by the accused. The prosecution's case is that the complainant had proceeded on leave on 2/3/1982 for indefinite period. Since he was on leave, the complainant had given two keys of the steel cupboard of Godrej make and two keys of the cash box to the accused, for which a receipt was passed on by the accused, which is produced on record at Exh. 12(A). The allegation is that on 19/3/1982 the accused went to the house of the complainant at Vadodara to get his signature on a cheque for Rs.35,200/-. The said cheque was signed by the complainant though he was on leave. The cheque was got encashed on the next day i.e. 20/3/1982 and relevant credit entry was made in the cash book. The complainant on 26/3/1982 came to Bharuch as he had arranged a programme to make payment to the persons entitled to receive the aid on that day. The complainant had asked the accused to keep such persons present in the

office on 26/2/1982 so that the complainant may disburse the amount. The case of the prosecution is that on that date no person came to receive the aid. Accused was also absent as he had proceeded on leave on that day. The complainant is said to have made inquiry with regard to persons who had already received the aid and Peon Dalsukhbhai informed him that two persons, namely Harivadanbhai Vithalbhai and Kokilaben had received monetary aid of Rs.600/- and Rs.300/- respectively. It is also alleged by the prosecution that on 27/3/1982 accused went to the house of complainant and produced bills before the complainant which were then signed by the complainant. The accused is also alleged to have told the complainant that he required monetary help of Rs.10,000/- and requested the complainant to make arrangement for the same. The complainant, therefore, asked him why he required such a big amount and the accused informed him that he had spent Rs.35,000/- for trading in pulse (Tuver) and the said amount belonged to the Government. The accused also assured the complainant that he would deposit the amount. The prosecution's case is that on 27/3/1982 the complainant sent a telegram to his superior officer, which is at Exh. 16 on record. On 28/3/1982 the complainant went to Bharuch and visited his office. One key of the office remained with one Shri Pathak, who stayed just opposite to the office premises. The complainant again went to the office on 29/3/1982 at about 11.00 a.m. At that time the entire staff in the office was present. On reaching the office he found that the cash of Rs.36,700/- was missing and accused was not able to give any explanation for the same. As a result of this, the complainant lodged the FIR, which is at Exh. 17 on record, with Bharuch City Police Station. On receipt of the information, the police commenced the usual investigation and at the end of the same, submitted chargesheet in the Court of the Ld. Chief Judicial Magistrate, Bharuch on 24/1/1983 for an offence punishable u/S. 409 of the Indian Penal Code (IPC). The Ld. Magistrate framed the charge against the accused at Exh.5 for the said offence, to which the accused pleaded not guilty and claimed to be tried.

At the trial the prosecution examined 8 witnesses to support its case. The defence did not examine any witness. However, the accused, over and above his statement u/S. 313 of the Criminal Procedure Code, also submitted a written statement in his defence. According to the accused, a theft was committed in the office of the Chief Probation Officer on or around 28/3/1982 and the cash which was placed in the cash box was stolen. According to him, on 29/3/1982 when police visited the

office, the doors of the office as well as that of the cupboard were found opened and the cash box was found missing. According to him Rs.34,300/- were in the cash box at that time. His defence is that the false case has been cooked up against him.

That at the end of the trial the Ld. Magistrate did not hold the accused guilty of committing offence u/S. 409 of the IPC and he acquitted him vide judgment and order dated 17/8/1991. This is how the State has come before this Court challenging the said order of acquittal.

3. Mr. D.P. Joshi, Ld. APP appearing for the State took me through the prosecution evidence and other relevant documents and also the judgment delivered by the Ld. Magistrate. According to him, the evidence of the prosecution conclusively proved that the accused in his capacity as Junior Clerk of the office of the Chief Probation Officer was entrusted with an amount of Rs.36,700/- meant for providing monetary aid to the widows and physically impaired persons, but instead of disbursing the amount amongst the persons entitled to receive it, he misappropriated the same for his personal benefit, causing wrongful loss to the Government and thereby he committed an offence punishable u/S. 409 of the IPC.

Looking to the prosecution evidence, this case solely rests on the circumstantial evidence and the prosecution has tried to bring out circumstances leading to the guilt of the accused. For that purpose, the prosecution has examined complainant Manubhai Jesingbhai P.W. 1 at Exh.11. According to this witness, at the relevant time he was discharging duties of Chief Probation Officer and the accused was working under him. He has stated that there was a scheme to provide monetary help to the widows and physically handicapped persons and he was required to look after such payment. According to him the aid was being given either in cash or by draft. For the safe custody of cash, a cash box was kept in the office which remained in the steel cupboard of Godrej make and the keys of the cupboard as well as cash box remained with him. He has further stated that he had proceeded on leave on 2/3/1982 for which he had submitted leave report at Exh.12. He has further stated that since he was on leave he had given two keys of the cupboard as well as cash box to the accused, but the accused was instructed not to make any payment. The keys were given only to enable him to send money orders to the widows in time. He has further stated that on 19/3/1982 the

accused visited him at Baroda to obtain his signature on a cheque for Rs.35,200/-. The said cheque was signed by him. At that time he also instructed the accused to keep the persons requiring aid, present in the office on 26/3/1982 as he proposed to visit the office on that day and make the disbursement of the amount. On 26/3/1982 he went to the office, but he found that no one was present except Peon Dalsukhbhai. On inquiry he also learnt that the accused was on leave on that day. He has further stated that on 27/3/1982 the accused again visited him at Baroda and he requested him to lend Rs.10,000/-. He, therefore, asked accused why he required such a big amount and the accused informed him that he had spent Rs.35,000/- which were received on 3/3/1982 for trading in pulse (Tuver). The accused also told him that he would deposit the entire amount and for that he was prepared to keep his house and other property in security. The complainant has further stated in the evidence that he sent a sent a telegram on 27/3/1982 to his superior officer informing him about the conduct of the accused. He has further stated that on 28/3/1982 he visited office and checked the cash book and found entry of Rs.36,700/- dated 18/3/1982. On the next day i.e. on 29/3/1982 he again went to the office and found the cupboard opened and cash box missing. He, therefore, asked the accused for explanation, but the accused was unable to give any reply. He, therefore, went to the police and lodged the complaint against the accused for committing misappropriation of Rs.36,700/-. In the cross-examination this witness has stated that before going to the office on 29/3/1982 he had visited advocate R.K. Mulaji. He thereafter, went to the office and at that time he was informed by the accused that the lock of the office was broken and there was a theft in the office. He also inquired from the sweeper of the office - Ramaben and she informed that when she came in the morning to the office, she found the door of the staircase opened and doors of the office were also open. He has further admitted that keys of the cupboard as well as cash box remained with him also. He has also admitted that while on leave, he was not authorized to sign the cheques as well as the contingent bills. He has also admitted that in the telegram which was sent by him to his superior officer on 27/3/1982 there was no mention made about the accused having misappropriated the amount. He has also admitted that one key of the office remained with one Shri Pathak, who resided just opposite to the office. It also appears from the cross-examination of this witness that at the relevant time this witness was facing financial crisis and his conduct was also not very much liked by his superior officer.

It may be stated here that the prosecution had at one stage submitted an application u/S. 319 of the Criminal Procedure Code to implead this witness as an accused in the trial. Ld. Magistrate, however, did not grant the said application. Apart from that the evidence of this witness at the most shows that during his absence the accused was in-charge of the work of the office and he had received an amount of Rs.35,200/- by getting a cheque signed by him. However, the evidence of this witness does not conclusively prove that it was the accused who had committed misappropriation of the said amount. As already stated above, on 29/3/1982 it was found that the doors as well as cupboard kept in the office were open when the sweeper arrived in the morning and the cash box which was placed in the cupboard was removed from it. This gives an indication that there was possibility of theft having taken place in the said office some time between 28th and 29th March 1982. It is also coming out in the evidence of this witness that there were several keys of the office, the cupboard and the cash box and even the complainant had an equal opportunity of removing the cash box from the cupboard. It is an admitted fact that though on leave the complainant had gone to the office on 26/3/1982, 28/3/1982 and again on 29/3/1982. There was no reason for him to visit the office on holiday i.e. 28/3/1982. The accused in his defence has stated that he had also approached the police to lodge the FIR regarding theft in the office. Unfortunately the prosecution has not examined the Investigating Officer of the case, who could have thrown much light on this aspect. The prosecution has not advanced any plausible reason for not examining important witness like Investigating Officer. The prosecution must suffer for such lapse.

4. The second important witness is P.W. No.2 Dalsukhbhai Limbabhai, who has been examined at Exh. 69. This witness has tried to say that the accused had brought an amount of Rs.35,200/- by encashing the cheques which were brought by this witness from the Treasury on 18/3/1982 and in presence of this witness the accused had counted the amount and kept in his purse and the said purse was thereafter placed in the cupboard. This witness has further stated that while going home in the evening the purse was taken by the accused. However, in the cross-examination this witness has admitted that this fact was not stated by him before the police and for the first time it was being stated in the Court while giving evidence. The evidence of this witness, therefore, does not inspire any confidence as he appears to go out of the

way to implead the accused in this offence.

The evidence of next witness Ramaben at Exh. 72 reveals that on 29/3/1982 when she went to the office at about 6.45 a.m. she found that there was no lock on the door of the office. She, therefore called Mr. Pathak, who asked her to get down and to go home. She accordingly left the office and went home. The evidence of this witness does not in any way support the prosecution case. On the contrary, it establishes a fact that on 29/3/1982 in the morning itself she found the office open, meaning thereby that some untoward incident had taken place prior to that time, during night between 28th and 29th. It, therefore, lends some corroboration to the say of the accused. The other witnesses do not take the case of the prosecution any further and hence there is no need to discuss their evidence.

5. Since this is a case of circumstantial evidence, the prosecution is required to prove and connect every piece of evidence so as to form a complete chain to establish the guilt of the accused. As discussed above, there are several important lacunas in the prosecution evidence and the prosecution is, therefore, not able to prove beyond any reasonable doubt that it is the accused and the accused alone who could have committed the offence. Since this is an appeal against acquittal, I should be slow in disturbing the judgment and order of acquittal passed by the Ld. Magistrate, if I find that the reasons assigned by him are cogent and proper. I am in broad agreement with the reasons assigned by the Ld. Magistrate for passing the order of acquittal and hence I do not see any justification to disturb the same. In the result, this appeal deserves to be dismissed and it is hereby ordered to be dismissed. Bail bonds, if any, are ordered to be cancelled.

[Akshay H. Mehta, J.]

* Pansala.